

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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In the Matter of )  
Federal-State Joint Board )  
On Universal Service )

CC Doc. No. 96-45  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (NTCA) hereby files these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") in this proceeding, released October 26, 1998, FCC 98-278.<sup>1</sup> NTCA is a national association of over 500 rural telephone companies.

**I INTRODUCTION**

This proceeding is very significant for the rural telephone companies represented by NTCA because it will have a material effect on whether the universal service mechanisms required by the Telecommunications Act of 1996 will be implemented in a way that promotes, rather than harms, universal service.<sup>2</sup> The rules adopted herein will either fairly apportion the burdens and benefits of the universal service mechanism between carriers with vastly different incentives and objectives, or they will create a new subsidy which rewards arbitrage and gaming of the system, while providing no assistance to consumers and harming the incumbents. Thus

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<sup>1</sup> 63 Fed.Reg. 68224, Dec. 10, 1998.

<sup>2</sup> The failure of the NPRM's Initial Regulatory Flexibility Analysis to even consider whether there might be an impact on rural telephone companies by adoption of the proposed rules is discussed in Section V, *infra*.

the more important issues in the long run are not as much how the interstate revenues of CMRS carriers are determined, but rather what the obligations of those carriers are to provide basic services.

## II CONTRIBUTION REQUIREMENTS SHOULD BE BASED ON TOTAL REVENUE

The FNPRM agonizes over the perceived difficulties of determining the proper jurisdictional allocation of CMRS carriers' revenues in order to determine their contribution obligations to support the universal service mechanisms. The Further Notice surprisingly neglects to mention substantial pending proposals in Petitions for Reconsideration to base the high cost universal service support contribution on total revenue in the same manner as had already been determined for the Schools, Libraries and Rural Health Care programs.<sup>3</sup> Since the FNPRM was released, the Commission has received a recommendation from the Joint Board with such a revision, subject to a favorable decision in the pending litigation before the 5<sup>th</sup> Circuit.<sup>4</sup>

Changing the contribution mechanism to a total revenue base would eliminate the difficult issues discussed in the FNPRM and treat all carriers, both contributors and recipients in a competitively neutral manner. The objections to use of total revenue have previously been addressed at length in comments of the Rural Telephone Coalition in which NTCA participated

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<sup>3</sup> See, e.g., Rural Telephone Coalition, Petition for Reconsideration and Clarification, July 7, 1997.

<sup>4</sup> Federal-State Joint Board, *Second Recommended Decision*, CC Docket No. 96-45, Released Nov. 25, 1998, FCC 98J-7.

and will not be repeated here.<sup>5</sup>

III RATHER THAN A FIXED ALLOCATION, A NON-BURDENSOME METHOD SHOULD BE DEVELOPED USING VALID STATISTICAL METHODS

A. A Fixed Allocation for All CMRS Carriers in a Class Will Necessarily be Inaccurate for Most

The Commission correctly recognizes that it should provide specific guidance to wireless telecommunications providers to identify their interstate revenues. It also correctly concludes that “good faith estimates” are not a satisfactory permanent solution because of the substantial potential for inequities.<sup>6</sup> The suggestion that the Commission can pick a fixed percentage allocator for all competing carriers is not an equitable solution either, however, because the assumption that levels of interstate traffic will be similar among providers of the same type has no reasonable basis.<sup>7</sup> Experience in the wireline industry shows that the percentage of interstate traffic will vary widely among carriers depending on the physical location and demographics of the market and the carrier’s rate structure.<sup>8</sup> Neither is it reasonable to assume that calling patterns are similar between wireline and mobile services, which have vastly different rate structures and subscriber demographics. But even if usage

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<sup>5</sup> Rural Telephone Coalition, Opposition to Petitions, August 7, 1997; Reply of Rural Telephone Coalition, August 28, 1997.

<sup>6</sup>FNPRM at para. 17.

<sup>7</sup>FNPRM at para. 19.

<sup>8</sup>The percentage interstate is not always lower in larger states because traffic patterns may focus on out of state centers of commerce in large sparsely populated states, while smaller states with higher densities may be more self-contained.

were determined, it would not represent revenue consistently between different carriers with different, unregulated rate structures operating in different geographical markets.

**B. A Methodology Should be Developed to Provide Reasonable Accuracy with a Minimum Burden on Wireless Carriers.**

If the universal service contribution based only on interstate revenues will amount to a material commitment for either the CMRS providers or the fund itself, then some reasonable degree of accuracy is required. NTCA members are sensitive to regulatory burdens and many have affiliated CMRS operations which would also be subject to any increase in reporting requirements. It is important that any methodology developed involve the minimum burden necessary to achieve a fair result. With industry cooperation, it should be possible to develop reliable determinations based upon the extrapolation of sampling data. This approach has long been used and accepted in the wireline industry for determining relative jurisdictional usage.<sup>9</sup> Such studies need not be overly onerous or expensive, particularly once the methodology is perfected. If it then develops that there is a close grouping of results between carriers, the Commission will have a valid basis for prescribing a default percentage or an “average schedule” type formula.<sup>10</sup>

**IV THE BASIC SERVICE DEFINITION MUST PROMOTE UNIVERSAL SERVICE**

**A. Universal service, not competitive neutrality is the objective of Section 254.**

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<sup>9</sup>See, 47 U.S.C. 36.2(3).

<sup>10</sup>See, 47 C.F.R. 69.606.

In the *Universal Service Order* the Commission correctly recognized that the universal service objectives of the Communications Act would not be realized if consumers' access to the public switched network was provided by carriers with usage rates so high as to make service unaffordable, or rates not comparable.<sup>11</sup> The Commission recognized that under the portability rules a carrier could receive high cost support but consumers would "...not receive the benefits universal service is designed to promote."<sup>12</sup> The FNPRM puts the issue of an appropriate quantity of service back on the table. Because wireless carriers have begun to make claims of eligibility for support,<sup>13</sup> it is important that the Commission quickly reach the determination it had expected to reach in 1997.

The FNPRM, more so than the Universal Service Order, inappropriately focuses on the issue of competitive neutrality when the focus should be on the consumer.<sup>14</sup> Even if it is correct that a high level of usage would give an advantage to wireline carriers and a low level would

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<sup>11</sup>Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 8813 (para. 67) ("Universal Service Order").

<sup>12</sup>*Id.*

<sup>13</sup> Western Wireless Corporation, Petition for Designation as an Eligible Telecommunications Carrier, Public Service Commission of Montana, Docket No. D.98.8.190, Aug. 18, 1998; Western Wireless states that it has filed 13 such petitions. Letter from Gene DeJordy to Commissioner Bruce Hagen (ND), November 30, 1998.

<sup>14</sup> In principle no one should object to competitive neutrality as a goal, so long as it is not elevated to superior status to the statutory goals of Section 254. In practice, however, the Commission's tendency is to find ways to handicap incumbent LECs in order to promote entry by others, regardless of the effects on the consumer. This approach is not neutrality but "industrial policy" in which the government picks winners and losers.

advantage wireless carriers,<sup>15</sup> the Commission is required by the law to determine what rules will most likely result in accomplishing the statutory goals of affordable service and rates that are comparable between rural and urban areas.

B. Minimum Usage Should be Based on Nationwide Average Local Minutes of Wireline Carriers.

The Universal Service Order, but not the FNPRM, discusses the relationship between a minimum amount of usage and the requirement of forward-looking economic cost (“FLEC”) methodology for a prescribed amount of usage to determine capacity requirements.<sup>16</sup> Assuming the Commission remains committed to use of FLEC, it must recognize that the logic of that methodology is inconsistent with an attempt to balance differences between carriers. It will make no sense to have portability of support between carriers based on predicted cost of serving an area if one class of carriers can then take that support and defeat the purpose by not providing the usage contemplated in calculating the cost. The minimum usage is therefore whatever input is ultimately determined for the FLEC cost model where that is used.

In the meantime before the model is adopted for non-rural carriers, and indefinitely for rural carriers, the Commission should adopt a minimum usage amount based upon the nationwide average local calling of wireline carriers<sup>17</sup>. This average will best approximate what Congress had in mind when it determined that the service to be supported should be comparable

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<sup>15</sup> The FNPRM recognizes that carriers using fixed wireless technology are likely to have cost structures similar to that of wireline technology. FNPRM at para. 48.

<sup>16</sup>Universal Service Order at 8813, para. 68.

<sup>17</sup>There does not appear to be any logical way to equate the differing calling scopes of wireline and mobile carriers.

between urban and rural users.<sup>18</sup>

#### V. THE INITIAL REGULATORY FLEXIBILITY ANALYSIS FAILS TO CONSIDER THE IMPACT ON RURAL TELEPHONE COMPANIES OF THE PROPOSED RULES

The FNPRM lists nine categories of potential small entities to which the rules will apply, none of which are per se rural telephone companies.<sup>19</sup> The Initial Regulatory Flexibility Analysis (“IRFA”) nevertheless recognizes that all carriers have contribution requirements.<sup>20</sup> Because the total of all contributions must equal the amount of support, if any carriers’ or class of carriers’ contributions fall short of an equitable amount, the remainder must be absorbed by other carriers, some of whom will be direct competitors. Further, the proposed rule to establish a minimum amount of usage to be offered will be directly applicable to all LECs that are small entities. Thus the rules will have an economic impact on all LECs as contributors, recipients and/or competitors and the Commission is therefore obligated to assess the impact of its proposals on the LECs that are small entities.

#### VI CONCLUSION

The issues raised by this FNPRM transcend the narrow question of the appropriate measure of contribution requirements for CMRS carriers, because the resolution will have

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<sup>18</sup>Subscribers of rural telephone companies have considerably smaller calling scope than urban companies, and as a result have a higher proportion of toll calling to conduct their daily business. Therefore, use of a nationwide average will produce a better comparability fit.

<sup>19</sup>Most rural telephone companies are small entities for purposes of the Regulatory Flexibility Act, despite the Commission’s continued refusal to accept the straightforward language of that Act and the position of the Small Business Administration. Some rural telephone companies are BETRS licensees (Para. 65) although this fact is not acknowledged and they are labeled and analyzed as “radiotelephone companies.”

<sup>20</sup>FNPRM at para. 69.

substantial impacts on the competitive environment and the success of the universal service support mechanisms. The difficulty of applying revenue, rate structure and service area measurements between two very different kinds of carriers can largely be avoided by use of total end user revenues to determine contribution. Failing the preferred solution, studies of representative periods can be used to develop a non-burdensome method of revenue allocation.

In determining the minimum basic service requirement, the Commission should focus on the consumer benefits which are the objectives of the statute rather than giving superior consideration to competitive neutrality. The minimum usage should be based on a nationwide average local minutes of use measurement of wireline carriers.

The Commission's Initial Regulatory Flexibility Analysis is inadequate because it fails to consider the substantial impact on rural telephone companies of the proposed rules.

Respectfully submitted,

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January 11, 1999



**CERTIFICATE OF SERVICE**

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